

Memorandum

Date : October 22, 2012

To : Files: Pescadero Marsh Lagoon Ecological Function Project
CEQA Administrative Record

From : Jay Chamberlin, Chief, Natural Resources Division
Department of Parks and Recreation

Subject : Addendum to Negative Declaration for the “Lagoon Ecological Function Project”

The purpose of this addendum is to revise the project description for the “Lagoon Ecological Function Project” of the National Oceanic and Atmospheric Administration (NOAA) Restoration Center and US Fish and Wildlife Service (USFWS) at Pescadero Marsh Natural Preserve. The Notice of Determination for the Negative Declaration was adopted on September 13, 2012.

The Project, as described in the Negative Declaration, proposed breaching the sandbar that forms at the mouth of Pescadero lagoon using only manual laborers with hand tools in order to allow water to flow from the lagoon to the ocean. The Project, implemented on October 4, 2012, successfully connected the lagoon to the ocean but flows were limited and the sandbar soon re-formed.

The revised project being proposed by NOAA will undertake the second breach outlined in the Project by using mechanized equipment in addition to manual labor to excavate a new pilot channel through the sandbar.

The use of mechanized equipment represents a change to the project as originally described in the Negative Declaration. State Parks has determined that this change in project description complies with the conditions for preparation of an addendum to a Negative Declaration. (CEQA Guidelines, Sec. 15164.) As the CEQA lead agency for the project, State Parks has determined that preparation of a subsequent Negative Declaration pursuant to Section 15162 was not required because the proposed changes in the project are not expected to result in significant effects to the environment.

Specifically, the USFWS has re-analyzed the impacts of the proposed action and prepared an updated Biological Opinion (BO) demonstrating that the project, as amended but subject to the existing conditions in the original Negative Declaration and Right of Entry (ROE) permit, is unlikely to adversely affect the California red-legged frog, San Francisco garter snake, or western snowy plover, and is not likely to jeopardize the continued existence of the tidewater goby. State Parks will rely on this updated BO to conclude that there will be no significant impact from the mechanized breach on these species. Similarly, the California Department of Fish and Game (DFG) has concluded that there will be no significant impacts from the proposed mechanized breach on western pond turtle, saltmarsh common yellowthroat, California brackishwater snail, and other state species of concern. State Parks relies on DFG’s determination for this addendum. Furthermore, the California Coastal Commission and

the National Marine Fisheries Service (NMFS) have concurred with the amended project, subject to the additional conditions specified in the USFWS BO. These conditions have been incorporated in the ROE permit with State Parks Best Management Practices (BMP)s taken from the California State Park Aquatic Operations Handbook for Coastal Beach Driving within Critical Habitat. These BMPs are required for the use of mechanized equipment on state park property. The updated approvals from all agencies and the ROE permit are included in the Appendix.

In light of these considerations, and subject to operational conditions that will be specified in the updated Right of Entry (ROE) permit, State Parks determines that no subsequent EIR is required and that the preparation of a subsequent Negative Declaration is unnecessary. Pursuant to CEQA Guidelines Sec. 15164 (c), this addendum is not being circulated for public review but will be posted to the Department's CEQA website.

State Parks shall issue a new ROE permit that includes specifications for the operation of heavy equipment to ensure that any new potentially significant impacts to the environment are minimized or avoided.

In addition to the revisions (pasted below) to the Project Description, all references to hand tools, manual breaching, and manual labor would be changed from what is included in the original Negative Declaration accordingly. The project description is amended as follows:

2.5 PROJECT DESCRIPTION

Sandbar Breaching

A contracted machine operator will mechanically assist a volunteer hand-labor crew with breaching the sandbar that forms at the mouth of Pescadero lagoon. Mechanized equipment, such as a backhoe, will be used excavate a pilot channel, aided by volunteers and other workers using hand tools. The channel for the breach would be dug to the approximate following dimensions: 300-feet long, 4-feet-wide, and 3-feet-below the lagoon water surface elevation. The channel would extend from the edge of the lagoon to the ocean. Excavated sand (approximately 135 to 180 cubic yards) would be deposited on the beach and will be spread and smoothed to minimize any visual impact. The channel would not be dug if the lagoon fails to stratify **or** if water quality is so poor (i.e., DO levels are less than 5mg/L at the surface at any of the monitoring locations) that lagoon biota could be adversely affected.

Operational requirements for purposes of operator and public safety, as well as environmental sensitivity will be incorporated into the ROE permit. In addition to the machine operator, up to approximately 10-15 people, including agency staff, would be participating in and/or monitoring the sandbar breaching activities; one or two additional individuals would conduct water quality sampling in the lagoon.

The staging area for the proposed project activities would be at the "North" parking lot

located on the west side of Highway 1. The heavy equipment will be staged from this location; volunteers and agency staff may also access the project site from the "Middle" parking lot and walking across the Highway 1 Bridge to the beach and the sandbar. From the staging area on the north side of the beach, the equipment will access the sandbar by driving south along the beach approximately 1 kilometer. The vehicle will stay in wet sand, but out of the waves, and speed will be limited to less than 5 mph. The excavation would be at the sandbar located this year on the west side of the Highway 1 Bridge (Figures 1 and 2). Excavator tracks will be leveled by hand crews after the equipment is removed from the beach.

Data Collection

The water depth and water surface elevation of the lagoon would be measured at specific locations both before and after project implementation and would also be monitored while activities are being conducted. A Stadia rod would be used to measure water depth at the Butano Channel footbridge but would not be referenced to a tidal datum.

Water quality (dissolved oxygen, salinity, temperature, and pH) would be monitored using a hand-held YSI at three locations: beneath the pedestrian bridge crossing Butano Channel; below the Pescadero/Butano Creek confluence; and in the upper estuary. Water quality measurements would begin when the bar forms and would continue during and after project implementation. The measurements would be taken at the surface, at 0.5-meter increments below the surface, and at the bottom of the lagoon twice per week during the afternoon hours. Post-project water quality monitoring would continue two times per week until the sandbar has reformed, after which water quality would be monitored once per week until the sandbar breaches naturally.

The proposed project has been designed with the following avoidance and minimization measures:

- Water quality will be monitored to ensure a breach is not conducted if stratifying isn't identified or if water quality is so poor that it would adversely affect the lagoon biota.
- The NOAA Restoration Center and FWS staff would be on-site during the breach activity to supervise work crews and to conduct monitoring via instruments and observation.
- The NOAA Restoration Center, FWS, and volunteers' vehicles would not be driven on the beach.
- No trash would be left on-site.
- Only the minimum amount of the sandbar would be disturbed to create the breach
- The NOAA Restoration Center and FWS staff would remain on site during construction activities to ensure upland habitat disturbance is minimized.
- Direct access routes, staging area limits, and total area of construction activities would be limited to the minimum necessary to achieve the proposed project. Vehicles would

- be parked in disturbed or paved areas only.
- All volunteers and equipment operators would undergo training in the identification of listed species and required avoidance measures prior to the start of work activities.

2.6 PROJECT IMPLEMENTATION

Project implementation would occur between 7 and 30 days after the lagoon is closed due to sandbar formation and is expected to be conducted between September 1 and December 31, 2012. The actual date(s) for the breach(es) is dependent upon DO levels in the lagoon. It would not take more than one day to complete each breach. During this time the state beach would remain open, although access to the work areas would be restricted to authorized personnel only.

FIGURE 1

Approximate proposed route of mechanized equipment
from staging area to sandbar

Google

To see all the details that are visible on the screen, use the "Print" link next to the map.

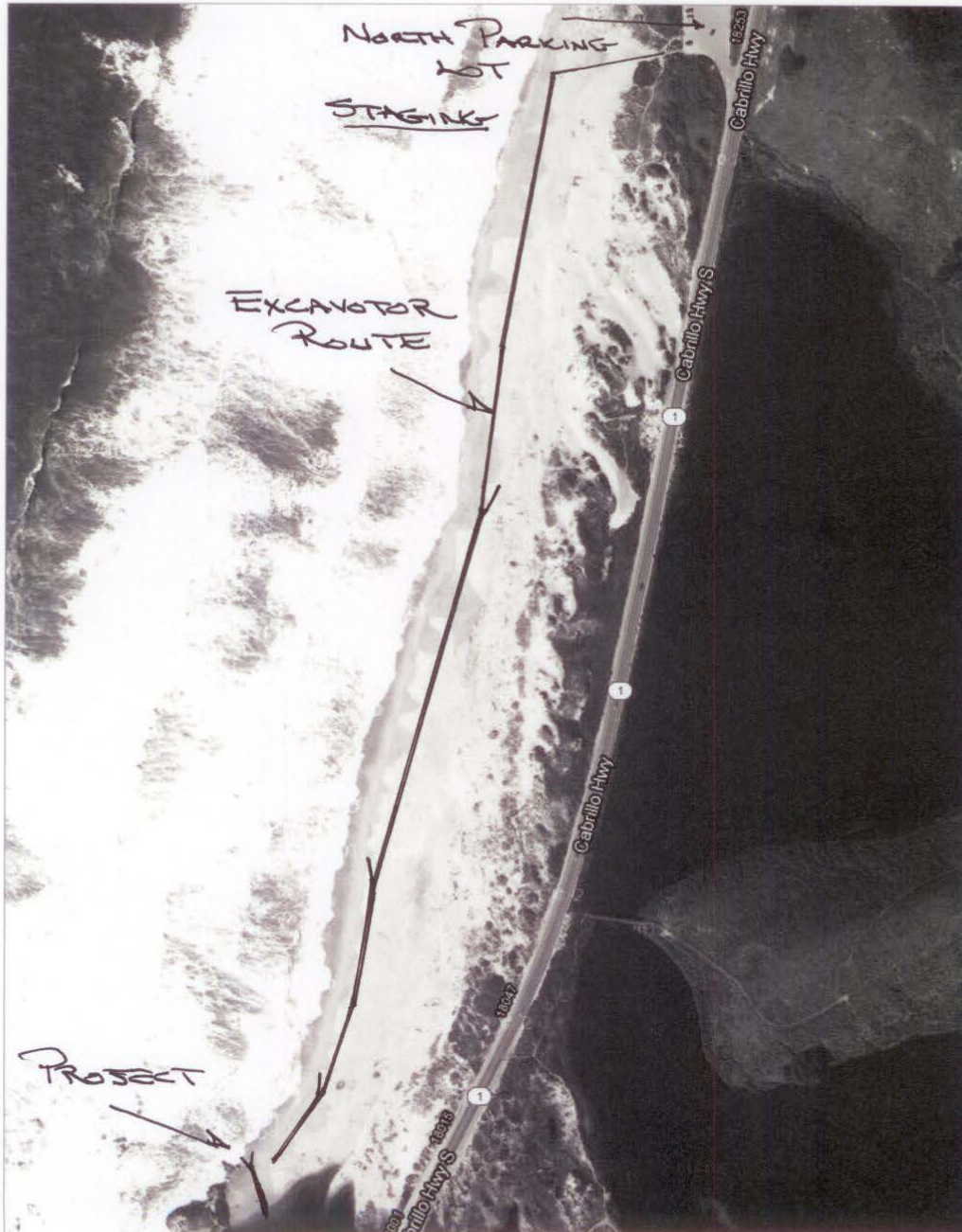
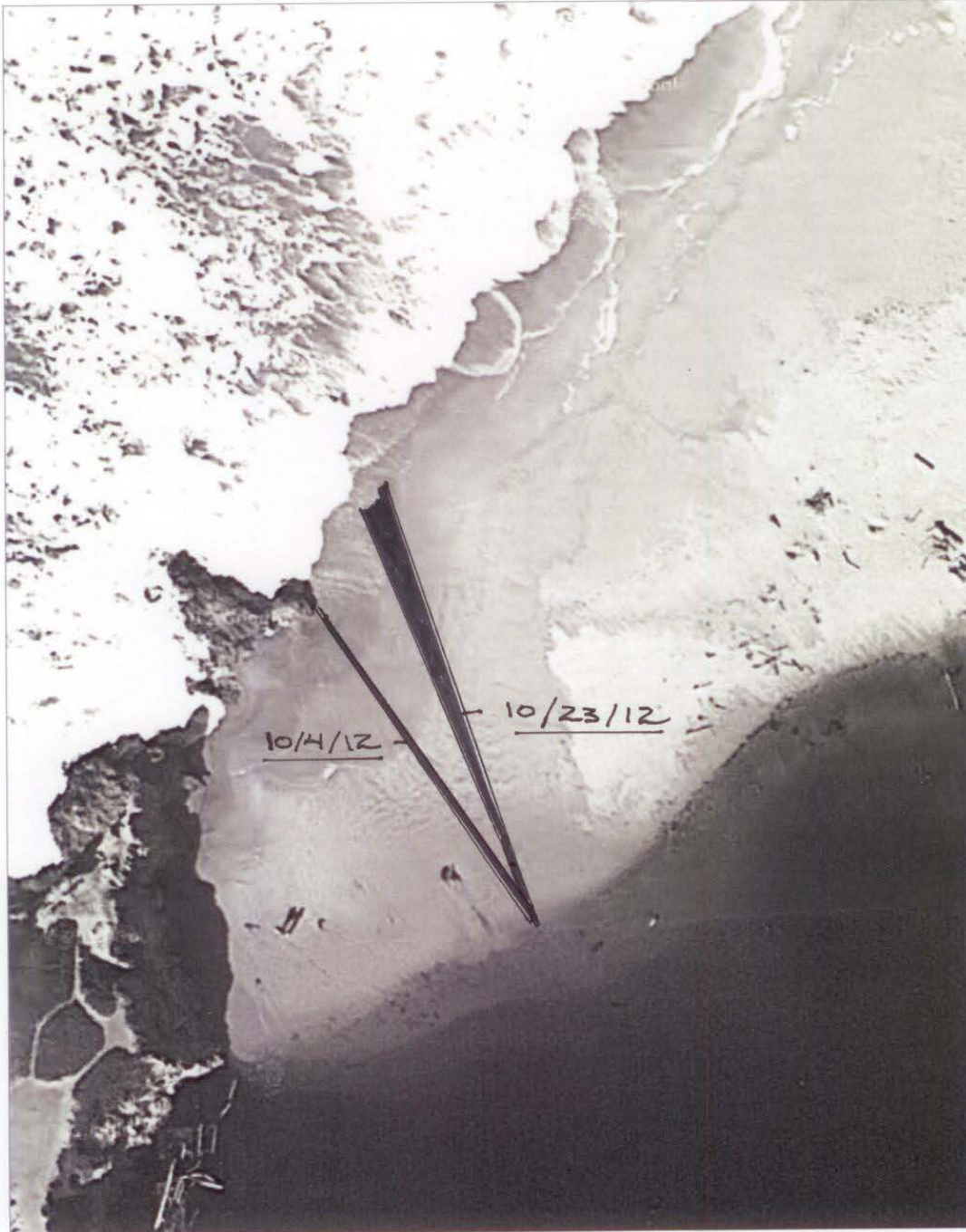


FIGURE 2

Approximate location and direction of hand-dug(10/4/12)
versus mechanically excavated (10/23/12) trench

To see all the details that are visible on the screen, use the "Print" link next to the map.

Google



APPENDIX

Updated Project Permits and Approvals



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846



In Reply Refer To:
08ESMF00-2012-F-0594-2

OCT 19 2012

Mr. Patrick J. Rutten
Southwest Regional Supervisor
NOAA Restoration Center
777 Sonoma Avenue, Room 219-A
Santa Rosa, California 95404-6528

Subject: Request for Reinitiation of Formal Consultation for the Pescadero Lagoon
Ecological Function Project, San Mateo County, California

Dear Mr. Rutten:

This letter is in response to the National Oceanic and Atmospheric Administration's (NOAA) October 17, 2012, letter to the U. S. Fish and Wildlife Service (Service), requesting reinitiation of formal consultation on the proposed Pescadero Lagoon Ecological Function Project (Project) in San Mateo County, California. The request was received by this office on October 17, 2012. The Service issued a biological opinion (08ESMF00-2012-F-0594) for the Project on August 27, 2012. At issue are the potential effects of the Project on the federally endangered tidewater goby (*Eucyclogobius newberryi*) and its designated critical habitat, the federally threatened California red-legged frog (*Rana draytonii*), the federally threatened western snowy plover (*Charadrius nivosus nivosus*), and the federally endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*). This letter revises the project description and amends these changes to the Project's biological opinion, as appropriate. This response is issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

This document was prepared based on: (1) information provided in the August 9, 2012, letter from NOAA to the Service; (2) NOAA Restoration Center-USFWS/SFWO, Draft Project Proposal (v10) Pescadero Lagoon Ecological Function Project, August-December, 2012-2016; (3) your October 17, 2012 letter requesting reinitiation of formal consultation; (4) the October 17, 2012 proposal amendment; (5) electronic mail correspondence between the NOAA, the California Department of Fish and Game (CDFG), and the Service; and (6) other information available to the Service.

The August 27, 2012, biological opinion is amended as follows:

Add to the Description of the Proposed Action:

The NOAA intends to do a second breach using a licensed and insured contractor who will be

using a tracked excavator (Caterpillar 312) and hand-crews. The excavator will allow a channel to be cut deeper than can be accomplished by hand and will avoid the stockpiling of sand adjacent to the channel. Visually, the channel will resemble a "V" cut versus a channel with vertical sides. Excavated sand will spread and smoothed to minimize any visual impact. The lower channel edges and V-shaped aspect will also present less of a safety issue to the public. To minimize the impact of surf and swell collapsing the channel, the channel will be angled to the north. This is a characteristic of most California coastal lagoon systems.

In the event that pre-project water monitoring indicates that dissolved oxygen is less than 5mg/l, the channel will be constructed, but the lagoon will not be breached with a sand "plug" left in place. The intent of constructing the channel is that it will function as a "high-flow" channel moderating outflow instead of the lagoon filling and a full natural breach occurring.

All pre- and post-breach monitoring will continue as outlined in the original project description. This project will be coordinated and comply with all terms and/or conditions required by Service, National Marine Fisheries Service, U.S. Army Corps of Engineers, California Coastal Commission and Regional Water Quality Control Board. Additionally, any permit requirements of California State Parks and CDFG will also be met.

Conservation measures for the western snowy plover: A qualified biologist will lead the excavator from the parking lot to the trench site and back. The vehicle will stay on or near the wet sand, but out of the waves and will travel no faster than five (5) miles per hour while on the beach.

Equipment Best management Practices (BMPs): Due to the use of mechanized equipment the following BMP's will be required:

1. Construction equipment used on the beach will be checked in the morning prior to entering the beach and, if necessary, action will be taken to prevent fluid leaks. If leaks occur during work on the beach, the contractor will contain the spill and remove the affected soils.
2. Equipment washing, refueling, and/or servicing will not take place on the beach or in the Preserve.
3. The contractor will insure that work crews are carefully briefed on the importance of observing the construction precautions given the sensitive work environment.
4. The equipment operator will have spill clean-up supplies on site and be knowledgeable in their proper use and deployment.
5. In the event of a spill, the operator will immediately cease work and start clean-up. NOAA will notify the appropriate authorities (San Francisco Bay Regional Water Quality Control Board, California Coastal Commission, California Department of Parks and Recreation, CDFG's Office of Spill Prevention and Response, the Service, and NOAA's Damage Assessment, Remediation, and Restoration Program).
6. All work will take place during daylight hours and equipment removed before sunset.
7. When transiting on the beach on the beach, all vehicles will remain as high on the upper beach as possible and avoid contact with ocean waters and intertidal areas.

8. The construction site will maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain).
9. Construction activities will not result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment.

The other portions of the Project Description, Species Baseline, Effects Analysis, Reasonable and Prudent Measures, and Reporting Requirements in the 2012 biological opinion remain the same.

Discussion

Western snowy plovers on Pescadero State Beach have likely habituated to the presence of human disturbance through exposure to a high volume of visitors that includes large groups of school children. Shorebirds generally don't react to passenger vehicles or heavy equipment as they would to pedestrians or predators. The general condition of Pescadero State Beach is un-groomed and therefore, large drift wood, human made structures such as lean-tos, sand mounds, hand dug pits, and a multitude of footprints are common features. The Service does not perceive these features as having a negative effect on movement of the western snowy plover. The addition of an excavator to the Project Description will result in tracking from the parking lot south to the trench site. The Service does not perceive the resulting tracks as a significant change from existing conditions, nor does it generally perceive vehicle tracks as having a negative impact on western snowy plovers.

Western snowy plovers are highly mobile birds both on foot and wing and are able to disperse away from potential threats. Due to the low transit speed of the excavator proposed for this Project as well as the localized and deliberate movements needed for trenching, the Service does not expect the equipment to present any immediate harm to the western snowy plover.

Conclusion

The Service has reviewed your request along with the proposal amendment and has considered the additional construction footprint, activities associated with the changes in the Project Description, Project timing, conservation measures, BMPs, and their potential effect on the western snowy plover, San Francisco garter snake, California red-legged frog, and tidewater goby. The Service has determined that the changes in the Project and the associated potential effects to the western snowy plover, San Francisco garter snake, California red-legged frog, and tidewater goby are within those effects analyzed in our August 27, 2012 biological opinion. Therefore, the Service concludes that the Project, including the proposed changes documented above, is still in compliance with the biological opinion and no further consultation is necessary.

As provided in 50 CFR §402.16 and in the terms and conditions of the biological opinion, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion;

and/or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation. This electronic correspondence is being sent under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

If you have any questions regarding this biological opinion, please contact Dan Cordova, Fish and Wildlife Biologist (Dan_Cordova@fws.gov) or Ryan Olah, Coast Bay/Forest Foothills Division Chief (Ryan_Olah@fws.gov) at (916) 414-6600.

Sincerely,



Susan K. Moore
Field Supervisor

cc: Cameron Johnson, South Branch Chief, U.S. Army Corps of Engineers
Regulatory Division, 16th Floor, 1455 Market Street, San Francisco, CA 94103

Scott Wilson, Acting Regional Manager, California Department of Fish and Game,
Bay Delta Region, 7329 Silverado Trail, Napa, CA 94558

Chet Bardo, Superintendent, Santa Cruz District, California State Parks, 303 Bit Trees
Park Road, Felton, CA 95018

Memorandum

Date: October 22, 2012

To: Mr. Victor S. Roth
California Department of Parks and Recreation
303 Big Trees Park Road
Felton, CA 95018

From: 
Scott Wilson, Acting Regional Manager
Department of Fish and Game – Bay Delta Region, 7329 Silverado Trail, Napa, California 94558

Subject: Pescadero Lagoon Ecological Function Project, Addendum to the Mitigated Negative Declaration, SCH #2012082058

The Department of Fish and Game (DFG), as a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) Section 15386 has reviewed the Addendum and associated Best Management Practices to the Pescadero Lagoon Ecological Function Mitigated Negative Declaration (MND). The Addendum includes utilizing an excavator to assist the hand crews in conducting the second breach originally described in the MND.

DFG has determined the potential impacts on fish and wildlife resources from the new project description are those that are adequately analyzed in the original MND and no new analyses need to be conducted. All Best Management Practices and Project Requirements and Avoidance Measures as stated in the Addendum and MND respectively, shall be followed.

If you have any questions, please contact Ms. Suzanne Deleon, Environmental Scientist, at (831) 440-9433; or Mr. Eric Larson, Environmental Program Manager, at (707) 944-5528.

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
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October 22, 2012

Patrick Rutten
Southwest Region Supervisor
NOAA Restoration Center
777 Sonoma Avenue, Room 219-A
Santa Rosa, CA 95404-6528

Subject: Revisions to Negative Determination ND-037-12 (Pescadero Creek Lagoon Sandbar Breaching and Ecological Function Project, San Mateo County)

Dear Mr. Rutten:

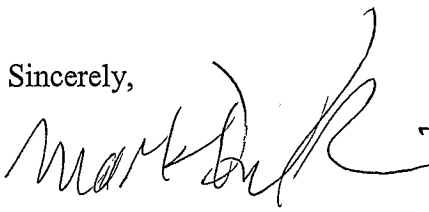
On September 5, 2012, the Coastal Commission staff concurred with a NOAA negative determination for the manual breaching of the Pescadero Creek lagoon sandbar up to two times between September and December 2012, to test a method to maintain sufficient water quality in the estuary to reduce the likelihood of fish kills.

NOAA conducted the activity manually, as proposed, and now proposes mechanical breaching to improve the chance of success, as described in the attached "Breach Two" project description.

With the measures included in the revised project description, and as authorized by the Fish and Wildlife Service and NOAA Long Beach offices (October 19, 2012, letters, also attached), the project does not raise issues not covered in our previous concurrence, and we therefore concur with this revised proposal.

Please contact Mark Delaplaine at (415) 904-5289 if you have any questions regarding this matter.

Sincerely,

(RM) 
CHARLES LESTER
Executive Director

Attachments

cc: CCC – Central Coast District
CCC – Dr. John Dixon
California Department of Parks and Recreation
California Department of Fish and Game
National Marine Fisheries Service
U.S. Fish and Wildlife Service



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802- 4213

October 19, 2012

In response, refer to:
2012/03257

Patrick Rutten, Supervisor
Southwest Region
NOAA Restoration Center
777 Sonoma Avenue, Room 219-A
Santa Rosa, California 95404

Dear Mr. Rutten:

Thank you for your letter of October 17, 2012, regarding the use of a tracked excavator (Caterpillar 312) for the NOAA Restoration Center's (NOAA RC) Pescadero Creek Lagoon Ecological Function Project in southern San Mateo County, California. The NOAA RC proposes to use a licensed and insured contractor who will be using a tracked excavator and hand-crews. The excavator will allow a channel to be cut deeper than was accomplished by hand and will avoid the stockpiling of sand adjacent to the channel.

NOAA's National Marine Fisheries Service (NMFS) and the NOAA RC completed consultation pursuant to section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), on the Pescadero Creek Lagoon Ecological Function Project on September 11, 2012. NMFS and the NOAA RC concurred the proposed project was not likely to adversely affect threatened Central California Coast steelhead or their designated critical habitat or Central California Coast coho salmon designated critical habitat. On October 4, 2012, the NOAA RC completed the first of two scheduled sandbar breaches. Although an opening of the sandbar did occur, there was no noticeable effect on water quality or quantity in the lagoon. At the time of the consultation, it was not anticipated that heavy equipment would be needed for the project.

NMFS has reviewed the proposed tracked excavator plan provided with your October 17, 2012, letter. The excavator will allow a channel to be cut deeper than was accomplished by hand and will avoid the stockpiling of sand adjacent to the channel. Visually, the channel will resemble a "V" cut versus a channel with vertical sides. Excavated sand will spread and smoothed to minimize any visual impact. The lower channel edges and V-shaped aspect will also present less of a safety issue to the public. To minimize the impact of surf and swell collapsing the channel, the channel will be angled to the north as is characteristic of most coastal lagoon systems.

As previously proposed and implemented, the NOAA RC will use hand labor to help construct a pilot channel. The addition of using a tracked excavator (and the NOAA RC's avoidance and minimization measures specific to heavy equipment) and the size of the pilot channel are the only



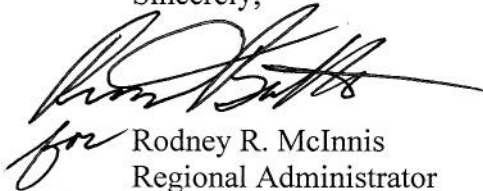
modifications to the proposed project. The pilot channel constructed during the October 4, 2012, breach did require more digging than was anticipated in NMFS' September 11, 2012, letter (approximately 67 cubic yards of sand was deposited on the beach versus the 8 cubic yards that was expected). Thus, based on the initial breach, the NOAA RC expects to construct a pilot channel that is approximately 300-feet-long, 4-feet-wide, and 3-feet-deep. Based on these pilot channel dimensions, approximately 135 cubic yards of sand will be deposited on the beach.

In the event that pre-project water monitoring indicates that dissolved oxygen is less than 5mg/l in the top 0.5 meter of the water column, the channel will be constructed, but with a sand "plug" left in place, and the lagoon will not be breached. The intent of constructing the channel is that it will function as a "high-flow" channel moderating outflow versus the lagoon filling to the point and a full natural breach occurring. All pre- and post-breach monitoring will continue as outlined in the original project description.

The changes to the original project that are the focus of this letter do not change those conclusions reached in NMFS' September 11, 2012, letter. Concerning the use of an excavator, heavy equipment in this case will not affect listed species or designated critical habitat in a manner or to an extent not previously considered during the September 2012 ESA section 7 consultation, because: (1) construction activities will not result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment; and (2) the NOAA RC will open the sandbar during an incoming high tide period. This will maintain a low head differential between the lagoon's surface water elevation and the ocean's surface, and therefore will reduce the rate and volume of water exiting the lagoon. As for the amount of sand displaced on the beach and the increased size of the pilot channel, the additional sand and larger pilot channel are not expected to influence or alter lagoon habitat in a way not already considered. Because the modifications will not affect listed species or designated critical habitat in a manner or to an extent not previously considered during our September 2012 ESA section 7 consultation, NMFS believes reinitiation of consultation is not required for this modification to the project.

Thank you for your coordination with NMFS regarding the Pescadero Creek Lagoon Ecological Function Project. Please contact Mr. William Stevens at (707) 575-6066, or via email at william.stevens@noaa.gov should you have any questions concerning these comments.

Sincerely,



for Rodney R. McInnis
Regional Administrator

cc: Cay Goude, U.S. Fish and Wildlife Service, Sacramento
Scott Wilson, California Department of Fish and Game, Yountville
Ian Liffman, U.S. Army Corps of Engineers, San Francisco
Sandi Potter, San Francisco Bay Regional Water Quality Control Board, Oakland
Jay Chamberlin, California Department of Parks and Recreation, Sacramento
Copy to File: ARN: 151422SWR2012SR00329



DEPARTMENT OF PARKS AND RECREATION

303 Big Trees Park Road

Felton, CA 95018

(831) 335-6318 Fax (831) 335-6394

Janelle R. Beland, Acting Director

October 20, 2012

Patrick Rutten
SW Regional Supervisor
NOAA Restoration Center
777 Sonoma Ave. Rm. 219
Santa Rosa, CA 95404

RE: Right of Entry Permit Amendment
NOAA Restoration Project
Pescadero SB

Dear Mr. Rutten:

This correspondence will serve to document and approve your request to amend the Right of Entry Permit issued to you on September 19, 2012 for the Pescadero Lagoon Sandbar Breaching and Ecological Function Project.

Said entry permit granted permission to the National Oceanic and Atmospheric Administration Restoration Center (NOAA) to enter state park property and *manually breach* the Pescadero Creek Lagoon sandbar up to two times between September 19th and December 31, 2012. The sandbar breach and ecological function project was viewed as a mean of testing a method for maintaining sufficient water quality in the lagoon directed at the goal of reducing the likelihood of fish kills. Potential environmental impacts were carefully assessed and analyzed through the preparation of and adoption of a Negative Declaration for the proposal (State Clearinghouse # 2012082058). The project was found to be in compliance with the California Environmental Quality Act (CEQA) and the State CEQA Guidelines. (See Exhibit A, Right of Entry Permit, 9/19/2012).

The original proposal, the approved Right of Entry Permit and the accompanying CEQA review were based upon the notion that the breached channel, extending from the ocean to the seaward edge of the lagoon and measuring approximately 75 feet long, three feet wide and one foot below the lagoon surface elevation, was to *be manually dug* involving a crew of approximately 10 to 15 people.

NOAA now is proposing that the second lagoon breach be accomplished by mechanical means and that the breached channel cut be slightly deeper and configured in a different manner. This is the basis of this proposed amendment to the Right of Entry Permit. The second lagoon breach, scheduled to occur on or around October 23rd and/or 24th, 2012, is to be accomplished by means of utilizing a medium-sized tracked excavator (Caterpillar 312) operated by a fully trained, licensed, and insured operator

operating under contract by NOAA. The proposed second cut channel be slightly deeper than the original by 1 to 2 feet and be configured in a manner to resemble a "V" cut versus a channel with vertical sides. NOAA anticipates moving 135-180 CY of sand (300'L x 4'W x 3'D). To minimize the impact of surf and swell collapsing the channel, the mechanically cut channel will be angled to the north which is characteristic with most coastal lagoon systems.). All excavated sand will be leveled and smoothed and all excavator tracks will be leveled as well

All pre and post-breach monitoring will continue as addressed in the original project proposal and description. NOAA and sought and obtained amended biological opinions incorporating these noted project modifications. (Exhibit B, USFWS 10/19/2012) & (Exhibit C, NFMS 10/19/2012). The amended project has been coordinated with and shall comply with all terms and conditions required by the US Fish and Wildlife Service, National Marine Fisheries Service, California Coastal Commission and Regional Quality Control Board.

The Caterpillar 312 excavator will enter state park property at the "North Parking Lot" for Pescadero State Beach sited approximately 1 kilometer north of the project site (Exhibit D, location map). Snowy Plovers have been recently observed on this section of beach. It is required that a "qualified biologist" accompany on foot and lead the piece of heavy equipment from the North Parking Lot to the project site and back to ensure that there will be no adverse impact to snowy plovers. The Caterpillar 312 excavator shall proceed along the beach at a speed of less than 5 mph and along a route within the wetted area of the beach but out of the waves as a mean of avoiding impacts to snowy plovers.

In addition to these noted requirements and precautions, the Caterpillar 312 operator shall strictly adhere to all of the Best Management Practices contained within the California State Park Aquatic Operations Handbook for Coastal Beach Driving within Critical Habitat (Exhibit E).

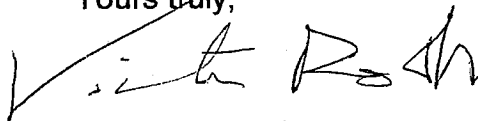
The following Best Management Practices (BMPs) are required for the use of mechanized equipment on state park property.

1. Construction equipment used on the beach will be checked prior to entering the state beach property and, if necessary, action will be taken to prevent fluid leaks. If leaks occur during work on the beach, the contractor will contain the spill and remove the affected soils.
2. Mechanized equipment to be driven onto state park property shall be cleaned prior to arrival on to state park lands to prevent the spread of invasive species onto parks property. Equipment washing, refueling, and/or servicing will not take place on state park property.
3. The contractor will insure that work crews are carefully briefed on the importance of observing the construction precautions given the sensitive work environment.

4. The equipment operator will have spill clean-up supplies on site and be knowledgeable in their proper use and deployment.
5. In the event of a spill, the operator will immediately cease work and start clean-up. NOAA RC will notify the appropriate authorities (San Francisco Bay Regional Water Quality Control Board, California Coastal Commission, California Department of Parks and Recreation, California Department of Fish and Game, and U.S. Fish and Wildlife Service, NOAA DARRP).
6. All work will take place during daylight hours and equipment removed before sunset.
7. When transiting on the beach, all vehicles will remain in the wetted area to avoid impacts to snowy plovers, but will avoid contact with intertidal areas.
8. The construction site will maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain).
9. Construction activities will not result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment.

Other than the changes noted in this letter and its associated exhibits which are incorporated by reference into the amendment approval, all other terms and conditions of the of the Right of Entry permit entered into September 19, 2012 remain in full force and effect.

Yours truly,

A handwritten signature in black ink, appearing to read "Paul Keel", written over a horizontal line.

Paul Keel For...
San Mateo Sector Superintendent

RIGHT OF ENTRY PERMIT

Agency: California Department of Parks and Recreation

Project: Pescadero Lagoon Sandbar Breaching and Ecological Function Project

National Oceanic and Atmospheric Administration Restoration Center (NOAA)

This Right of Entry Permit (Permit) is made and entered into this 19th day of September, 2012, between the State of California, acting by and through its Department of Parks and Recreation, hereinafter called State, and the National Oceanic and Atmospheric Administration Restoration Center (NOAA), a federal agency, hereinafter called Permittee; State and Permittee may hereinafter be referred to as a Party, or collectively the Parties.

RECITALS

- **Whereas**, the State owns, operates and maintains the State Park known as Pescadero State Beach, in the County of San Mateo, State of California; and
- **Whereas**, Permittee has applied to State for permission to access Pescadero State Beach for purposes of carrying out Permittee's Pescadero Lagoon Sandbar Breaching and Ecological Function Project (the Project); and
- **Whereas**, the State desires to accommodate Permittee's application for permission to enter Pescadero State Beach for purposes of the Project, as provided herein and as, and to the extent, such Project may be ultimately described and conditioned by State's Negative Determination (SCH #2012082058). A copy of the noted Negative Declaration for the Pescadero Lagoon Ecological Function Project, San Mateo County, will be attached hereto as Exhibit "A" and herein incorporated by reference, and as may be conditioned by any other regulatory agency having jurisdiction, if applicable.

TERMS AND CONDITIONS

Now therefore, the State by this Permit hereby grants to the Permittee permission to enter upon State's property, conditioned upon the agreement of the Parties that this Permit does not create or vest in Permittee any interest in the real property herein described or depicted, that the Permit is revocable and non-transferable, and that the Permit is further subject to the following terms and conditions:

1. **Project Description:** By this Permit, the State hereby grants to the Permittee permission to enter onto those lands depicted and/or described on Exhibit "B" (the Property), attached hereto and herein incorporated by this reference, for the purpose of implementing the Pescadero Lagoon Ecological Function project summarized as follows: Permittee will manually breach the Pescadero Creek lagoon sandbar up to two times between September and December 31, 2012 to test a method to maintain sufficient water quality in the estuary to reduce the likelihood of fish kills. A channel will be excavated using hand tools through the Pescadero sandbar, which typically forms between 200 feet west and 100 feet east of the Highway #1 bridge. The channel will extend from the ocean to the seaward edge of the lagoon and will measure approximately 75 feet long, three feet wide and one foot below the lagoon water surface elevation. Approximately eight cubic yards of sand will be excavated and sidecast on the beach during each day-long breach. The state beach will remain open during each of the breaching events but access to the immediate work area will be restricted to project personnel, which is expected to number approximately 10-15 people.
2. **Permit Subject to Laws and Regulatory Agency Permits:** This Permit is expressly conditioned upon Permittee's obtaining any and all regulatory permits or approvals required by the relevant regulatory agencies for the Project and Permittee's use of the Property, and upon Permittee's compliance with all applicable municipal, state and federal laws, rules and regulations, including all State Park regulations. Permittee shall, at Permittee's sole cost and expense, comply with the Project Description, and requirements and mitigations contained in the project's primary Environmental Document.

EXHIBIT A

Prior to commencement of any work, Permittee shall obtain all such legally required permits or approvals and submit to the State full and complete copies of all permits and approvals, including documentation related to or referenced in such permits and approvals, along with the corresponding agency contact and telephone numbers, and related California Environmental Quality Act (CEQA) and/or National Environmental Policy Act (NEPA) documentation as applicable.

3. **Term of Permit:** This Permit shall only be for the period beginning on September 19th 2012 and ending on December 31, 2012.
4. **Consideration:** There is no fee for this Permit.
5. **Permit Subject to Existing Claims:** This Permit is subject to existing contracts, permits, licenses, encumbrances and claims which may affect the Property.
6. **Waiver of Claims and Indemnity:** Permittee waives all claims against State, its officers, agents and/or employees, for loss, injury, death or damage caused by, arising out of, or in any way connected with the condition or use of the Property, the issuance, exercise, use or implementation of this Permit, and/or the rights herein granted. Permittee further agrees to protect, save, hold harmless, indemnify and defend State, its officers, agents and/or employees from any and all loss, damage, claims, demands, costs and liability which may be suffered or incurred by State, its officers, agents and/or employees from any cause whatsoever, arising out of, or in any way connected with this Permit, exercise by Permittee of the rights herein granted, Permittee's use of the Property and/or the Project for which this Permit is granted, except those arising out of the sole active negligence or willful misconduct of State. Permittee will further cause such indemnification and waiver of claims in favor of State to be inserted in each contract that Permittee executes for the provision of services in connection with the Project for which this Permit is granted.
7. **Contractors:** Permittee shall incorporate the terms, conditions and requirements contained herein when contracting out all or any portion of the work permitted hereunder. Permittee shall be responsible for ensuring contractor/subcontractor compliance with the terms and conditions contained herein. Failure of Permittee's contractors to abide by State's terms and conditions shall constitute default by Permittee (see DEFAULT paragraph below) allowing State to terminate this Permit and seek all legal remedies.
8. **Insurance:** NOAA (Permittee), as an agency of the Federal Government, is self-insured. It will promptly consider and adjudicate any and all claims which may arise out of the use of the State's premises by Permittee or duly authorized representatives of contractor of the Permittee and to pay for any damage or injury as may be required or allowed by Federal law. Such adjudication will be pursued under the Federal Tort Claims Act, 28 U.S.C. 2671 et seq. or other such legal authority as may be pertinent. The Permittee also agrees to consider and adjudicate any claims for damage or injury sustained by its personnel in the performance of their official duties which on State's premises. Such adjudication will be made pursuant to the Federal Employees' Compensation Act, 5 U.S.C. 8101 et seq. or other such legal authority as may be pertinent.
9. **Reservation of Rights:** State reserves the right to use the Property in any manner, provided such use does not unreasonably interfere with Permittee's rights herein.
10. **Access Limits and Conditions:** Access to the Property shall be limited to the access designated by State.
11. **Notice of Work:** Any required notices to State shall be sent to the State authorities in charge of the State Park named below. Prior to any entry upon the Property for any of the purposes hereinabove set forth, Permittee shall provide the State contact[s] named below with written notice of Permittee's intent to enter the Property. Notice may be by electronic mail. Permittee shall also notify the State contact[s] listed below in writing prior to any change in the Project schedule or cessation or completion of work. Should State personnel need to contact Permittee, State shall notify Permittee's contact person listed below:

STATE:

Contact: Paul Keel, Sector Superintendent
San Mateo Sector
Address: 95 Kelly Ave.
Half Moon Bay, CA 94019
Telephone: (650) 726-8817
Fax: (650) 726-8816

PERMITTEE'S CONTACT:

Contact: Pat Rutten, Supervisor
NOAA Restoration Center
Address: 777 Santa Rosa Av Rm 219-A
Santa Rosa, CA 95404
Telephone: (707) 575-6059
Fax: (707) 575-6094

12. **Limits of Work:** In no event shall this Permit authorize work in excess or contrary to the terms and conditions of any regulatory agency permit or approval. Under no circumstances, whether or not

authorized by any regulatory agency, other permit or any person or entity other than State, shall work exceed that which is authorized by this Permit.

13. **Public Safety:** Permittee shall take, and shall cause its contractors or subcontractors to take, any and all necessary and reasonable steps to protect the public from harm in connection with the Project or implementation of this Permit.
14. **Compliance with Monitoring and Mitigation Measures:** Resource monitoring and mitigation measures identified by the Permittee's environmental document shall be completed in accordance with and to the satisfaction of the District Superintendent or designee.

Permittee's activities conducted under this Permit shall comply with all State and Federal environmental laws, including, but not limited to, the Endangered Species Act, CEQA, and Section 5024 of the Public Resources Code.

Any of Permittee's archaeological consultants working within the boundaries of the Property shall obtain a permit from the California State Parks Archaeology, History & Museums Division prior to commencing any archaeological or cultural investigations of the Property.

Permittee shall immediately advise State's contact person if any new site conditions are found during the course of permitted work. State will advise Permittee if any new historical resources (including archaeological sites), special status species, threatened/endangered species protocols, or other resource issues are identified within the Project site. Permittee shall abide by District Superintendent or designee's instructions to protect the resource(s) during the permitted work or risk revocation of the Permit.

In the event that previously unknown cultural resources, including, but not limited to, dark soil containing shell, bone, flaked stone, groundstone, or deposits of historic trash are encountered during Project construction by anyone, work will be suspended at that specific location, and the Permittee's work will be redirected to other tasks, until after a State-qualified archaeologist has evaluated the find and implemented appropriate treatment measures and disposition of artifacts, as appropriate, in compliance with all applicable laws and department resource directives.

If human remains are discovered during the Project, work will be immediately suspended at that specific location and the District Superintendent or designee shall be notified by Permittee. The specific protocol, guidelines and channels of communication outlined by the California Native American Heritage Commission (NAHC), and/or contained in Health and Safety Code Section 7050.5 and Public Resources Code Sections 5097.9 et seq., will be followed. Those statutes will guide the potential Native American involvement in the event of discovery of human remains.

15. **Restoration of Property:** Permittee shall complete the restoration and clean-up of the Premises in consultation with, and to the satisfaction of State Sector Superintendent.
16. **Performance Bond:** A Performance Bond is not required.
17. **Right to Halt Work:** The State reserves the right to halt work and demand mitigation measures at any time, with or without prior notice to Permittee, in the event the State determines that any provision contained herein has been violated, or in the event that cessation of work is necessary to prevent, avoid, mitigate or remediate any threat to the health and safety of the public or state park personnel, or to the natural or cultural resources of the state park.
18. **Use Restrictions:** The use of the Property by Permittee, including its guests, invitees, employees, contractors and agents, shall be restricted to the daytime hours between sunrise and sunset on a day-by-day basis, unless otherwise approved in advance in writing by State. No person shall use or occupy the Property overnight.

Activities on the Property shall be conducted only in a manner which will not interfere with the orderly operation of the state park. Permittee shall not engage in any disorderly conduct and shall not maintain, possess, store or allow any contraband on the Property. Contraband includes, but is not limited to: any illegal alcoholic beverages, drugs, firearms, explosives and weapons.

Roads and trails where motorized vehicles are normally prohibited may be used for vehicle access by Permittee, its employees, agents or contractors for patrol, maintenance or repair purposes only, and only to the extent specified by State, and shall be otherwise subject to all other conditions and/or restrictions of this Permit and any applicable laws, state park regulations and state park policies.

Permittee shall not use or allow the Property to be used, either in whole or in part, for any purpose other than as set forth in this Permit, without the prior written consent of the State.

19. **State's Right to Enter:** At all times during the term of this Permit and any extension thereof, there shall be and is hereby expressly reserved to State and to any of its agencies, contractors, agents, employees, representatives, invitees or licensees, the right at any and all times, and any and all places, to temporarily enter upon said Property to survey, inspect, or perform any other lawful State purposes.

Permittee shall not interfere with State's right to enter.

20. **Protection of Property:** Permittee shall protect the Property, including all improvements and all natural and cultural features thereon, at all times at Permittee's sole cost and expense, and Permittee shall strictly adhere to the following restrictions:
- (a) Permittee shall not place or dump garbage, trash or refuse anywhere upon or within the Property, except in self-contained trash receptacles that are maintained to State's satisfaction by Permittee.
 - (b) Permittee shall not commit or create, or suffer to be committed or created, any waste, hazardous condition or nuisance in, on, under, above or adjacent to the Property.
 - (c) Permittee shall not cut, prune or remove any vegetation upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.
 - (d) Permittee shall not disturb, move or remove any rocks or boulders upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.
 - (e) Permittee shall not grade or re-grade, or alter in any way, the ground surface of the Property, except as herein permitted, or subsequently approved in writing by the District Superintendent.
 - (f) Permittee shall not bait, poison, trap, hunt, pursue, catch, kill or engage in any other activity which results in the taking, maiming or injury of wildlife upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.
 - (g) Permittee shall not use, create, store, possess or dispose of hazardous substances (as defined in the California Hazardous Substances Act) on the Property except as herein permitted, or subsequently approved in writing by the District Superintendent.
 - (h) Permittee shall exercise due diligence to protect the Property against damage or destruction by fire, vandalism and any other causes.
21. **Default:** In the event of a default or breach by Permittee of any of the terms or conditions set forth in this Permit, State may at any time thereafter, without limiting State in the exercise of any right of remedy at law or in equity which State may have by reason of such default or breach:
- (a) Maintain this Permit in full force and effect and recover the consideration, if any, and other monetary charges as they become due, without terminating Permittee's right to use of the Property, regardless of whether Permittee has abandoned the Property; or
 - (b) Immediately terminate this Permit upon giving written notice to Permittee, whereupon Permittee shall immediately surrender possession of the Property to State and remove all of Permittee's equipment and other personal property from the Property. In such event, State shall be entitled to recover from Permittee all damages incurred or suffered by State by reason of Permittee's default, including, but not limited to, the following:
 - (i) any amount necessary to compensate State for all the detriment proximately caused by Permittee's failure to perform its obligations under this Permit, including, but not limited to, compensation for the cost of restoration, repair and revegetation of the Property, which shall be done at State's sole discretion and compensation for the detriment which in the ordinary course of events would be likely to result from the default; plus
 - (ii) at State's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

- 22. State's Right to Cure Permittee's Default:** At any time after Permittee is in default or in material breach of this Permit, State may, but shall not be required to, cure such default or breach at Permittee's cost. If State at any time, by reason of such default or breach, pays any sum or does any act that requires the payment of any sum, the sum paid by State shall be due immediately from Permittee to State at the time the sum is paid. The sum due from Permittee to State shall bear the maximum interest allowed by California law from the date the sum was paid by State until the date on which Permittee reimburses State.
- 23. Revocation of Permit:** The State shall have the absolute right to revoke this Permit for any reason upon ten (10) days written notice to Permittee. Written notice to Permittee may be accomplished by electronic or facsimile transmission, and the notice period set forth in this paragraph shall begin on the date of the electronic or facsimile transmission, or, if sent by mail, on the date of delivery. If Permittee is in breach of the Permit or owes money to the State pursuant to this Permit, any prepaid monies paid by Permittee to State shall be held and applied by the State as an offset toward damages and/or amounts owed. Nothing stated herein shall limit the State's exercise of its legal and equitable remedies.
- 24. Recovery of Legal Fees:** In any action brought to enforce or interpret any provisions of this Permit or to restrain the breach of any agreement contained herein, or for the recovery of possession of the Property, or to protect any rights given to the State against Permittee, and in any actions or proceedings under Title 11 of the United States Code, if the State shall prevail in such action on trial or appeal, the Permittee shall pay to the State such amount in attorney's fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of the costs of said action.
- 25. Voluntary Execution and Independence of Counsel:** By their respective signatures below, each Party hereto affirms that they have read and understood this Permit and have received independent counsel and advice from their attorneys with respect to the advisability of executing this Permit.
- 26. Reliance on Investigations:** Permittee declares that it has made such investigation of the facts pertaining to this Permit, the Property and all the matters pertaining thereto as it deems necessary, and on that basis accepts the terms and conditions contained in this Permit. Permittee acknowledges that State has made, and makes, no representations or warranties as to the condition of the Property, and Permittee expressly agrees to accept the Property in its as-is condition for use as herein permitted.
- 27. Entire Agreement:** The Parties further declare and represent that no inducement, promise or agreement not herein expressed has been made to them and this Permit contains the entire agreement of the Parties, and that the terms of this agreement are contractual and not a mere recital.
- 28. Warranty of Authority:** The undersigned represents that they have the authority to, and do, bind the person or entity on whose behalf and for whom they are signing this Permit and the attendant documents provided for herein, and this Permit and said additional documents are, accordingly, binding on said person or entity.
- 29. Assignment:** This Permit shall not be assigned, mortgaged, hypothecated, or transferred by Permittee, whether voluntarily or involuntarily or by operation of law, nor shall Permittee let, sublet or grant any license or permit with respect to the use and occupancy of the Property or any portion thereof, without the prior written consent of State.
- 30. Choice of Law:** This Permit will be governed and construed by the laws of the State of California.

STATE OF CALIFORNIA
Department of Parks and Recreation

NOAA RESTORATION CENTER

By: 

For Paul Keel
Sector Superintendent
San Mateo Sector
95 Kelly Avenue
Half Moon Bay, CA 94019
(650) 726-8817
(650) 726-8816 (fax)

By:  9/19/12

Pat Ruten
Supervisor, NOAA Restoration
777 Sonoma Ave. Rm 219
Santa Rosa, CA 95404
(707) 575-8059
(707) 575-6094 (fax)

FINAL

**INITIAL STUDY
NEGATIVE DECLARATION**

**PESCADERO STATE BEACH
LAGOON ECOLOGICAL FUNCTION PROJECT**

September 2012

State Clearinghouse # 2012082058



State of California
DEPARTMENT OF PARKS AND RECREATION
Santa Cruz District Headquarters
303 Big Trees Park Road
Felton, CA 95018

EXHIBIT A



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846



In Reply Refer To:
08ESMF00-2012-F-0594-2

OCT 19 2012

Mr. Patrick J. Rutten
Southwest Regional Supervisor
NOAA Restoration Center
777 Sonoma Avenue, Room 219-A
Santa Rosa, California 95404-6528

Subject: Request for Reinitiation of Formal Consultation for the Pescadero Lagoon
Ecological Function Project, San Mateo County, California

Dear Mr. Rutten:

This letter is in response to the National Oceanic and Atmospheric Administration's (NOAA) October 17, 2012, letter to the U. S. Fish and Wildlife Service (Service), requesting reinitiation of formal consultation on the proposed Pescadero Lagoon Ecological Function Project (Project) in San Mateo County, California. The request was received by this office on October 17, 2012. The Service issued a biological opinion (08ESMF00-2012-F-0594) for the Project on August 27, 2012. At issue are the potential effects of the Project on the federally endangered tidewater goby (*Eucyclogobius newberryi*) and its designated critical habitat, the federally threatened California red-legged frog (*Rana draytonii*), the federally threatened western snowy plover (*Charadrius nivosus nivosus*), and the federally endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*). This letter revises the project description and amends these changes to the Project's biological opinion, as appropriate. This response is issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

This document was prepared based on: (1) information provided in the August 9, 2012, letter from NOAA to the Service; (2) NOAA Restoration Center-USFWS/SFWO, Draft Project Proposal (v10) Pescadero Lagoon Ecological Function Project, August-December, 2012-2016; (3) your October 17, 2012 letter requesting reinitiation of formal consultation; (4) the October 17, 2012 proposal amendment; (5) electronic mail correspondence between the NOAA, the California Department of Fish and Game (CDFG), and the Service; and (6) other information available to the Service.

The August 27, 2012, biological opinion is amended as follows:

Add to the Description of the Proposed Action:

The NOAA intends to do a second breach using a licensed and insured contractor who will be

EXHIBIT B

using a tracked excavator (Caterpillar 312) and hand-crews. The excavator will allow a channel to be cut deeper than can be accomplished by hand and will avoid the stockpiling of sand adjacent to the channel. Visually, the channel will resemble a "V" cut versus a channel with vertical sides. Excavated sand will spread and smoothed to minimize any visual impact. The lower channel edges and V-shaped aspect will also present less of a safety issue to the public. To minimize the impact of surf and swell collapsing the channel, the channel will be angled to the north. This is a characteristic of most California coastal lagoon systems.

In the event that pre-project water monitoring indicates that dissolved oxygen is less than 5mg/l, the channel will be constructed, but the lagoon will not be breached with a sand "plug" left in place. The intent of constructing the channel is that it will function as a "high-flow" channel moderating outflow instead of the lagoon filling and a full natural breach occurring.

All pre- and post-breach monitoring will continue as outlined in the original project description. This project will be coordinated and comply with all terms and/or conditions required by Service, National Marine Fisheries Service, U.S. Army Corps of Engineers, California Coastal Commission and Regional Water Quality Control Board. Additionally, any permit requirements of California State Parks and CDFG will also be met.

Conservation measures for the western snowy plover: A qualified biologist will lead the excavator from the parking lot to the trench site and back. The vehicle will stay on or near the wet sand, but out of the waves and will travel no faster than five (5) miles per hour while on the beach.

Equipment Best management Practices (BMPs): Due to the use of mechanized equipment the following BMP's will be required:

1. Construction equipment used on the beach will be checked in the morning prior to entering the beach and, if necessary, action will be taken to prevent fluid leaks. If leaks occur during work on the beach, the contractor will contain the spill and remove the affected soils.
2. Equipment washing, refueling, and/or servicing will not take place on the beach or in the Preserve.
3. The contractor will insure that work crews are carefully briefed on the importance of observing the construction precautions given the sensitive work environment.
4. The equipment operator will have spill clean-up supplies on site and be knowledgeable in their proper use and deployment.
5. In the event of a spill, the operator will immediately cease work and start clean-up. NOAA will notify the appropriate authorities (San Francisco Bay Regional Water Quality Control Board, California Coastal Commission, California Department of Parks and Recreation, CDFG's Office of Spill Prevention and Response, the Service, and NOAA's Damage Assessment, Remediation, and Restoration Program).
6. All work will take place during daylight hours and equipment removed before sunset.
7. When transiting on the beach on the beach, all vehicles will remain as high on the upper beach as possible and avoid contact with ocean waters and intertidal areas.

8. The construction site will maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain).
9. Construction activities will not result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment.

The other portions of the Project Description, Species Baseline, Effects Analysis, Reasonable and Prudent Measures, and Reporting Requirements in the 2012 biological opinion remain the same.

Discussion

Western snowy plovers on Pescadero State Beach have likely habituated to the presence of human disturbance through exposure to a high volume of visitors that includes large groups of school children. Shorebirds generally don't react to passenger vehicles or heavy equipment as they would to pedestrians or predators. The general condition of Pescadero State Beach is un-groomed and therefore, large drift wood, human made structures such as lean-tos, sand mounds, hand dug pits, and a multitude of footprints are common features. The Service does not perceive these features as having a negative effect on movement of the western snowy plover. The addition of an excavator to the Project Description will result in tracking from the parking lot south to the trench site. The Service does not perceive the resulting tracks as a significant change from existing conditions, nor does it generally perceive vehicle tracks as having a negative impact on western snowy plovers.

Western snowy plovers are highly mobile birds both on foot and wing and are able to disperse away from potential threats. Due to the low transit speed of the excavator proposed for this Project as well as the localized and deliberate movements needed for trenching, the Service does not expect the equipment to present any immediate harm to the western snowy plover.

Conclusion

The Service has reviewed your request along with the proposal amendment and has considered the additional construction footprint, activities associated with the changes in the Project Description, Project timing, conservation measures, BMPs, and their potential effect on the western snowy plover, San Francisco garter snake, California red-legged frog, and tidewater goby. The Service has determined that the changes in the Project and the associated potential effects to the western snowy plover, San Francisco garter snake, California red-legged frog, and tidewater goby are within those effects analyzed in our August 27, 2012 biological opinion. Therefore, the Service concludes that the Project, including the proposed changes documented above, is still in compliance with the biological opinion and no further consultation is necessary.

As provided in 50 CFR §402.16 and in the terms and conditions of the biological opinion, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion;

Mr. Patrick Rutten

4

and/or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation. This electronic correspondence is being sent under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

If you have any questions regarding this biological opinion, please contact Dan Cordova, Fish and Wildlife Biologist (Dan_Cordova@fws.gov) or Ryan Olah, Coast Bay/Forest Foothills Division Chief (Ryan_Olah@fws.gov) at (916) 414-6600.

Sincerely,



Susan K. Moore
Field Supervisor

cc: Cameron Johnson, South Branch Chief, U.S. Army Corps of Engineers
Regulatory Division, 16th Floor, 1455 Market Street, San Francisco, CA 94103

Scott Wilson, Acting Regional Manager, California Department of Fish and Game,
Bay Delta Region, 7329 Silverado Trail, Napa, CA 94558

Chet Bardo, Superintendent, Santa Cruz District, California State Parks, 303 Bit Trees
Park Road, Felton, CA 95018



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802- 4213

October 19, 2012

In response, refer to:
2012/03257

Patrick Rutten, Supervisor
Southwest Region
NOAA Restoration Center
777 Sonoma Avenue, Room 219-A
Santa Rosa, California 95404

Dear Mr. Rutten:

Thank you for your letter of October 17, 2012, regarding the use of a tracked excavator (Caterpillar 312) for the NOAA Restoration Center's (NOAA RC) Pescadero Creek Lagoon Ecological Function Project in southern San Mateo County, California. The NOAA RC proposes to use a licensed and insured contractor who will be using a tracked excavator and hand-crews. The excavator will allow a channel to be cut deeper than was accomplished by hand and will avoid the stockpiling of sand adjacent to the channel.

NOAA's National Marine Fisheries Service (NMFS) and the NOAA RC completed consultation pursuant to section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), on the Pescadero Creek Lagoon Ecological Function Project on September 11, 2012. NMFS and the NOAA RC concurred the proposed project was not likely to adversely affect threatened Central California Coast steelhead or their designated critical habitat or Central California Coast coho salmon designated critical habitat. On October 4, 2012, the NOAA RC completed the first of two scheduled sandbar breaches. Although an opening of the sandbar did occur, there was no noticeable effect on water quality or quantity in the lagoon. At the time of the consultation, it was not anticipated that heavy equipment would be needed for the project.

NMFS has reviewed the proposed tracked excavator plan provided with your October 17, 2012, letter. The excavator will allow a channel to be cut deeper than was accomplished by hand and will avoid the stockpiling of sand adjacent to the channel. Visually, the channel will resemble a "V" cut versus a channel with vertical sides. Excavated sand will spread and smoothed to minimize any visual impact. The lower channel edges and V-shaped aspect will also present less of a safety issue to the public. To minimize the impact of surf and swell collapsing the channel, the channel will be angled to the north as is characteristic of most coastal lagoon systems.

As previously proposed and implemented, the NOAA RC will use hand labor to help construct a pilot channel. The addition of using a tracked excavator (and the NOAA RC's avoidance and minimization measures specific to heavy equipment) and the size of the pilot channel are the only

EXHIBIT C



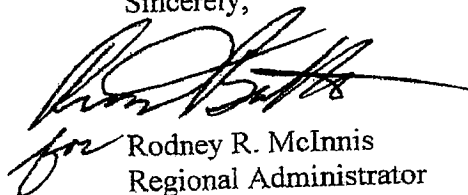
modifications to the proposed project. The pilot channel constructed during the October 4, 2012, breach did require more digging than was anticipated in NMFS' September 11, 2012, letter (approximately 67 cubic yards of sand was deposited on the beach versus the 8 cubic yards that was expected). Thus, based on the initial breach, the NOAA RC expects to construct a pilot channel that is approximately 300-feet-long, 4-feet-wide, and 3-feet-deep. Based on these pilot channel dimensions, approximately 135 cubic yards of sand will be deposited on the beach.

In the event that pre-project water monitoring indicates that dissolved oxygen is less than 5mg/l in the top 0.5 meter of the water column, the channel will be constructed, but with a sand "plug" left in place, and the lagoon will not be breached. The intent of constructing the channel is that it will function as a "high-flow" channel moderating outflow versus the lagoon filling to the point and a full natural breach occurring. All pre- and post-breach monitoring will continue as outlined in the original project description.

The changes to the original project that are the focus of this letter do not change those conclusions reached in NMFS' September 11, 2012, letter. Concerning the use of an excavator, heavy equipment in this case will not affect listed species or designated critical habitat in a manner or to an extent not previously considered during the September 2012 ESA section 7 consultation, because: (1) construction activities will not result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment; and (2) the NOAA RC will open the sandbar during an incoming high tide period. This will maintain a low head differential between the lagoon's surface water elevation and the ocean's surface, and therefore will reduce the rate and volume of water exiting the lagoon. As for the amount of sand displaced on the beach and the increased size of the pilot channel, the additional sand and larger pilot channel are not expected to influence or alter lagoon habitat in a way not already considered. Because the modifications will not affect listed species or designated critical habitat in a manner or to an extent not previously considered during our September 2012 ESA section 7 consultation, NMFS believes reinitiation of consultation is not required for this modification to the project.

Thank you for your coordination with NMFS regarding the Pescadero Creek Lagoon Ecological Function Project. Please contact Mr. William Stevens at (707) 575-6066, or via email at william.stevens@noaa.gov should you have any questions concerning these comments.

Sincerely,

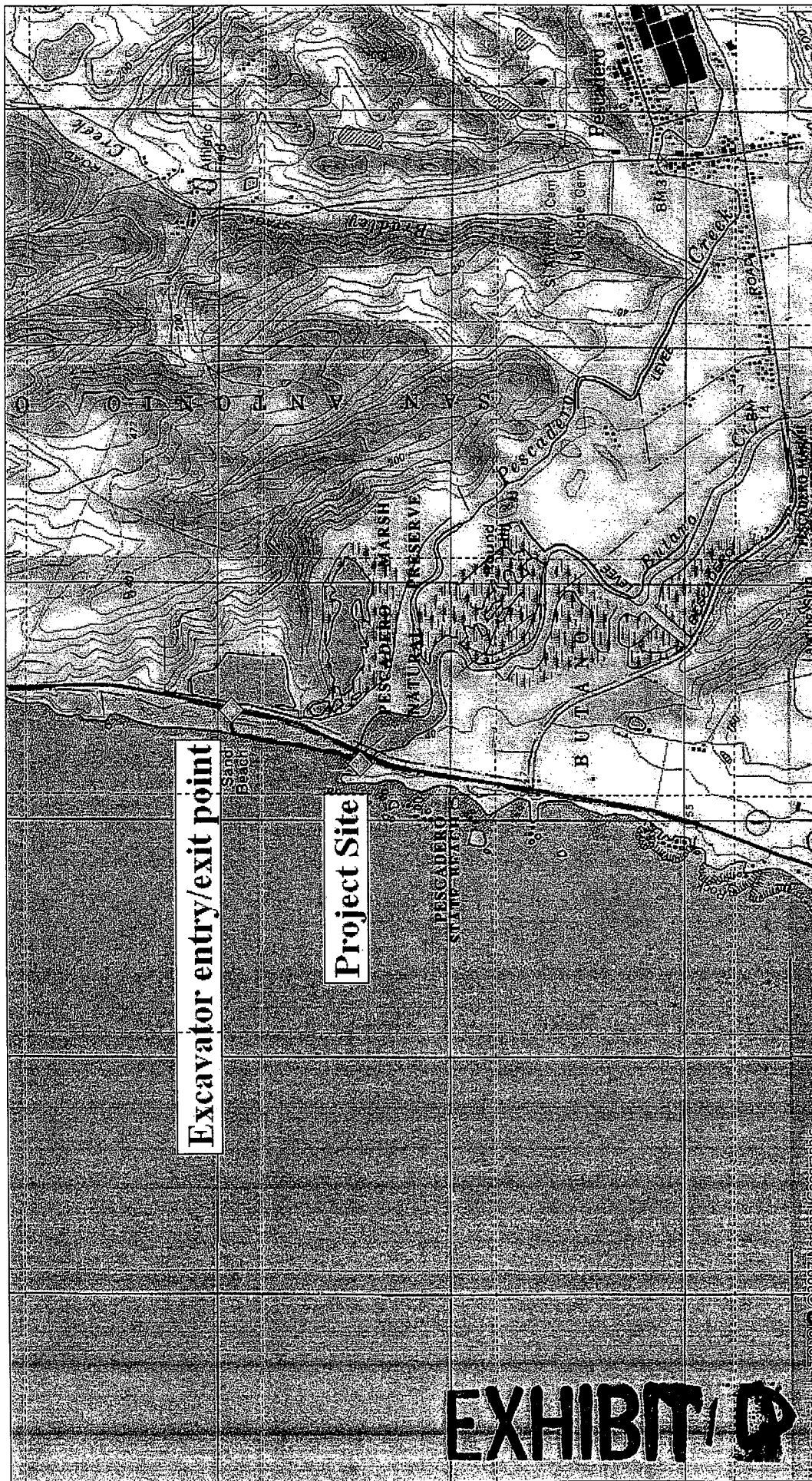

Rodney R. McInnis
Regional Administrator

cc: Cay Goude, U.S. Fish and Wildlife Service, Sacramento
Scott Wilson, California Department of Fish and Game, Yountville
Ian Liffman, U.S. Army Corps of Engineers, San Francisco
Sandi Potter, San Francisco Bay Regional Water Quality Control Board, Oakland
Jay Chamberlin, California Department of Parks and Recreation, Sacramento
Copy to File: ARN: 151422SWR2012SR00329

Project Site

**NATIONAL
GEOGRAPHIC**

10/19/12



TN MN
14°
10/19/12

0.0 0.5 1.0 miles
0.0 0.5 1.0 km

EXHIBIT 1

NATIONAL
GEOGRAPHIC

Coastal Beach Driving – Critical Habitat

This section is intended to inform Department employees of actions they should employ to prevent the disturbance of threatened and endangered species when operating a motor vehicle on a beach or near critical habitat.

1. **Endangered and Threatened Species and Rare Habitats within Operation Area.**

Almost all State Park units are home to animals and plants that have been placed on the endangered list by the U.S. Fish and Wildlife Service or the Department of Fish and Game. DPR has an obligation to protect these species as part of its mission. There are two listed species whose habitats are found on many of the coastal park units and are of special concern to the Department. These two species are the Western Snowy Plover and the California Least Tern. Some of the most important habitats of these species are found in units of the State Park System.

When a species is placed on the Endangered Species List, it is afforded considerable legal protections. These protections include the prohibition: *"... to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct"*. The role of most Department employees will be to carry out their duties in a way that reduces the chance of harming or disturbing the species and to educate the public about what they can do to protect them. Department employees should also report unusual sightings or events involving endangered species to the unit resource ecologist or other designated staff person. Deaths or disturbances of endangered species should be reported to a Department peace officer. Documentation of an endangered species death should be done on a DPR 385.

2. Field Identification/Natural History

• Western Snowy Plover

The Western Snowy Plover was placed on the Endangered Species List as a threatened species in 1993. It became threatened because of habitat damage caused by human disturbance, urban development, and expanding predator populations.

The Western Snowy Plover is a small bird approximately 6 inches in length. It is a whitish plover with:

- ◆ pale brown upper parts
- ◆ black legs
- ◆ a slender black bill
- ◆ black patches on each side of the neck, behind the eyes, and on the forehead.



They are often difficult to spot because they blend in easily with the sandy beach environment.

Snowy Plovers may inhabit coastal beach and dune habitats throughout any portion of the year, or year-round in some State Park units. Snowy Plovers usually feed, rest, and nest on coastal beaches just above the high tide line in the area of dry sand that is strewn with debris. The nesting season is generally considered March through September.

Humans and their pets have a negative effect on plover populations because the breeding season of the Snowy Plover coincides with a time of heavy beach use by people, namely from March 15 to September 15. The Plovers lay their eggs in little depressions in the sand; the eggs are tiny and blend in perfectly with the sand, so they are very hard to see. People, dogs, horses and vehicles on the beach may destroy nests or trample over Plovers.

In addition, trash that people leave on the beaches attracts crows, seagulls, coyotes, and other predators that will prey on Snowy Plover chicks and eggs.

Even when Snowy Plovers aren't nesting, humans and their pets can have a negative effect on the population. When humans and dogs on the beach disturb Plovers, the Plovers expend energy trying to run or fly away from that potential threat. When they use this energy, they lose stores of fat and energy needed for breeding the following nesting season.

Those staff members who drive on the beach in endangered species habitat need to keep informed of the localized presence, nesting periods and habitat of the species. This will require having a high degree of communication with the staff ecologists.



Sanderling

Snowy Plovers look a lot like another shorebird, the Sanderling, which is commonly found at many coastal California beaches.

The Sanderling is slightly larger than the plover, much grayer in color, and has a longer bill.

You can tell Sanderlings apart from Snowy plovers by their behavior.

- ◆ Sanderlings chase the waves as they search for food under the wet sand.
- ◆ Snowy Plovers feed on insects in the dry sand and the piles of kelp on the beach. They almost never get close to the breaking waves.

Sanderlings often join groups of resting Plovers, so both species could be present in any group of shorebirds seen sitting on the beach.

• California Least Tern

The California Least Tern was declared a federally Endangered Species in 1970. The destruction of the birds' habitat due to human activities and development was the main reason the species became endangered.

The California Least Tern is a small seabird approximately 9 inches in length with:

- ◆ gray and white coloring
- ◆ long, narrow, black-tipped wings
- ◆ a black cap
- ◆ a yellow bill with a black tip
- ◆ yellow legs
- ◆ a broad forked tail



Photo by Tom Veza

Nesting Terns are easily disturbed by human and pet activities because their breeding season coincides with a time of heavy beach use by people, namely from April to September.

Least Terns nest in colonies on beaches, mudflats, or among dunes. Tern nests are small depressions in the sand usually with 3 sand colored, lightly spotted eggs. Often, fencing protects known nesting areas.

Least Terns may inhabit and nest in various coastal units of the State Park System. During the winter they migrate to the Pacific coast of Central America.

- **Coastal Dune Habitat**

Red Sand Verbena



Photo by Albert P. Bekker,
California Academy of Sciences

The dunes of California's coastline are more than just piles of sand; they are a unique habitat that supports sensitive plants and animals. Coastal dune habitat is in severe decline in California and other parts of the world. Development and recreational impacts are contributing factors for the disappearance of this rare habitat.

The coastal dunes of California provide habitat for a variety of rare plants, which include Red Sand Verbena and Beach Saltbush. Red Sand Verbena is a California Species of Special Concern. Saltbush, though not yet a listed species, is a very rare plant in some units. Since the plants need a little seawater from time to time, Saltbush grows only in the foredunes - the very small, newly forming dunes that sit between the big dunes and the beach. The health of the foredunes is essential to the survival of coastal dune habitat.



Beach Saltbush

It is important to protect the dunes and their associated native plants in order to protect other species that are unable to live in dunes dominated by non-native plants.

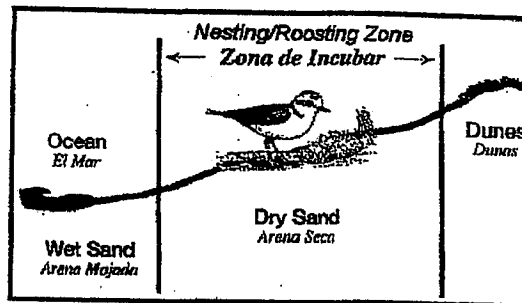
3. **How to Operate Near Threatened and Endangered Species and Rare Habitats**

Several State Park Units contain portions of coastline that is sensitive habitat for a number of endangered species, including the Western Snowy Plover and the California Least Tern. The following procedures shall apply whenever an employee operates a vehicle in a sensitive habitat.

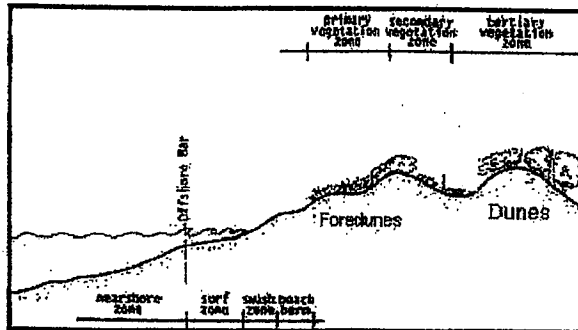
When the vehicle does need to be moved or driven, the Lifeguard and other employees shall exercise good judgment and caution and shall keep an eye out for Plovers and Terns. Snowy Plovers, and other endangered

animals, frequent the beach on a regular basis; therefore, unnecessary vehicle traffic is to be avoided and necessary driving should be done below the high tide line, on hard-packed sand if possible.

- ◆ Drive on hard-pack sand below the tide/debris line and avoid driving through, or near, nesting/roosting zones as depicted in this diagram. Keeping one tire on the wet sand at all times is a good rule of thumb.



- ◆ When driving onto the beach, drive in a straight line perpendicular to the dunes. Go directly to the water line. Avoid driving diagonally across the dry sand.
- ◆ Avoid non-essential vehicle operation and foot traffic on dunes and foredunes. This causes them to break down. (see diagram).



- ◆ No driving is allowed in signed or fenced areas
- ◆ Walk and drive only on established paths through the dunes.
- ◆ Drive in the same tracks whenever possible. Watch for new nesting in the depressions left by tires.
- ◆ Know what our rare animals and plants look like and keep an eye out for them while driving. When feasible avoid driving near groups of shore birds and vegetated areas.
- ◆ Have knowledge of where Plovers and their nests have been seen and stay away from those areas. Stay informed of the whereabouts of Plovers and their nests.
- ◆ Report any deceased Plovers or Terns, damaged nests, and all new nests either to a supervisor or to the Plover Project Coordinator

immediately. The Department is obligated to report damaged nests to the USFWS.

- ◆ Do not disturb natural beach features, such as driftwood and kelp, which are brought in by wave action, unless the area is designated for grooming.
- ◆ Ask visitors to stay away from the nesting/roosting zone, coastal dune habitats, and any fenced and signed areas.
- ◆ The enforcement of laws pertaining to dogs by peace officers is important to the survival of the endangered species as well as for public health and safety. Except as it may affect public and their own personal safety, all other employees are to encourage the public to comply with regulations pertaining to dogs and other pets on the beach and dunes.
- ◆ Encourage visitors to take their trash and food off of the beach at the end of the day.
- ◆ Keep a supply of public education material in the vehicle to be distributed to the public.
- ◆ Encourage visitors with kites not to fly their kites close to the Plover areas. Plovers think kites are predators and will expend energy running or flying away from them.